FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.986 OF 2003

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

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Shri Rakesh D.Dave for the petitioner.

Shri D.R.Mahadik i/by S.R.Singh for Respondent No.1.

Shri Dnyaneshwar Deshmukh for Respondent No.2.

Coram : R.S.Mohite,J

Date : 6.12.2005.

PC

1. Heard both sides. Rule. Rule made returnable forthwith.

2. This is a petition impugning an order dated 21.9.2002 passed by the Member, M.A.C.T., Kalyan below Exh. Nos.11 & 15 in M.A.C.No.1332/2001. It appears that the claim petition was originally filed by one Purushottam Krishnaji Tamhankar who was injured in the accident. He died pending the application

and on his death the present petitioners who are the legal heirs i.e. wife and children of the applicant have preferred two applications, one for condonation of delay and other for bringing them as legal heirs on record. It appears that the applications have been dismissed because there is no contention in the application for the right to sue survives and there is no specific prayer for setting aside the abatement. In the case like this, the right to sue obviously survives. A hyper technical view is taken that there is no prayer for setting aside abatement. The Court can exercise inherent powers to grant such prayer. Therefore, in the interest of justice, petition is allowed. Rule is made absolute in terms of prayer clause-(a). The delay if any, in filing the application for bringing heirs on record is also condoned.

(R.S.Mohite,J)